

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Judicial Review No: HBJ 06 of 2021

BETWEEN: **THE STATE**

AND: **DIRECTOR OF TOWN AND COUNTRY PLANNING**
FIRST RESPONDENT

AND: **NADROGA LOCAL RURAL AUTHORITY**
SECOND RESPONDENT

AND: **MINISTER OF LOCAL GOVERNMENT URBAN DEVELOPMENT**
HOUSING AND COMMUNITY DEVELOPMENT
THIRD RESPONDENT

AND: **SIGATOKA TOWN COUNCIL**, Civil Building, Queens Road, Sigatoka.
FIRST INTERESTED PARTY

EX-PARTE: **CRAIG AND EVETTE DE LA MARE**
APPLICANTS

Counsel Appearing : Applicants in Person
 : Mr. Kant for the 1st, 2nd and 3rd Respondents
Date of Hearing : 05 April 2023
Date of Ruling : 16 August 2023

RULING

1. Before me is an application for leave to issue Judicial Review. The Applicants are Craig and Evette De La Mare. The De La Mares own several residential and commercial properties in the main Bay area. They are also full time residents in Maui Bay. They are aggrieved about a decision by the Director of Town and Country Planning (“DTCP”) made on 09 May 2015 to the proprietors of three particular Lots which are zoned Special Use Tourism and which lots are situated along the foreshore on Maui Bay. According to the De La Mares, by that decision, the DTCP did the following:
 - a) granted certain relaxations.
 - b) the effect of (a) above was to allow an increase in the number of units and persons to be accommodated on each Special Use Tourism Lot.

- c) acted in defiance of the standards and specifications prescribed in the Special Development Guidelines for Maui Bay (“SDGMB”).
 - d) exercised her discretion under section 7 (4) of the Town Planning Act and General Provisions (Schedule C) unlawfully in bypassing, overriding or “amending” the SDGMB.
2. Apparently, the owner(s) of the three Special Use Tourism lots had sought approval from the Nadroga Rural Local Authority to allow an increase in the number of persons to be accommodated at any one point in any one of the three villas on their lot. On 09 January 2015, the NRLA referred the said application to the DTCP. By letter dated 09 May 2015, the DTCP approved the application.
 3. As I have said, the De La Mares grievance is that the DTCP’s approval is contrary to the “overall principal of the scheme” as embodied in the SDGMB of 2009. They say that, in granting the said approval, the DTCP was, purportedly, exercising a discretion under section 7 (4) of the Town Planning Act. They add that the SDGMB contains, *inter-alia*, some binding provisions to regulate plot ratio which sets out the number of bedrooms allowable per Tourist Villa Development, according to site area, and the maximum caring capacity (of person) per development. These provisions, they say, are there to ensure that Maui Bay maintains the upmarket low density residential (with Tourist Villa/Accommodation) character that it was meant to be.
 4. The De la Mares are also aggrieved that these “changes” were approved by the DTCP/NRLA without any consultation. They also say that there was no Environmental Impact Assessment done which violates the Environment Act.
 5. All the issues raised, I have discussed in **State v Director of Town & Country Planning and Ors ex-parte David Peterson & Anor**; Judicial Review No: HBJ 06 of 2020 (18 January 2023).
 6. I have read the submissions of all parties. In my view, while I agree with the submissions of the office of Attorney General concerning the status of the SDGMB, it is agreeable that the SDGMB at least creates a legitimate expectation in the De La Mares that they will be consulted before any decision which departs from the SDGMB is made by the DTCP.
 7. Accordingly, I grant leave.



A handwritten signature in blue ink, appearing to read "Anare Tuilevuka", is written over a horizontal dotted line.

Anare Tuilevuka
JUDGE

16 August 2023